

IN THE COURT OF APPEALS OF TENNESSEE
AT NASHVILLE

Submitted on Briefs August 21, 2009

STATE OF TENNESSEE v. CARL O'NEAL PERKINS

Appeal from the Circuit Court for Franklin County
No. 18098 Thomas W. Graham, Judge

No. M2008-02677-COA-R3-CV - Filed October 29, 2009

Juvenile defendant filed appeal after juvenile court found him in violation of the conditions of his aftercare program and committed him to the custody of the Department of Children's Services. The trial court affirmed the ruling of the juvenile court. We affirm.

Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Circuit Court
Affirmed; Case Remanded

JOHN W. McCLARTY, J., delivered the opinion of the court, in which HERSCHEL P. FRANKS, P.J., and CHARLES D. SUSANO, JR., J., joined.

Philip A. Condra, District Public Defender, and Robert G. Morgan, Assistant Public Defender, Jasper, Tennessee, for Appellant, Carl O'Neal Perkins.

Robert E. Cooper, Jr., Attorney General & Reporter, and John H. Bledsoe, Senior Counsel, Nashville, Tennessee, for Appellee, State of Tennessee.

OPINION

I. BACKGROUND

The defendant, Carl O'Neal Perkins (DOB: 4-20-91), was a participant in an aftercare program of the Tennessee Department of Children's Services ("DCS") in Franklin County. On March 6, 2008, Mr. Perkins was charged by juvenile court petition with delinquency for the following alleged behavior:

Carl Perkins was dismissed from Franklin County Alternative School on 2-25-08. Carl has had multiple suspensions this school year. Carl was disrespectful to authority and staff at the tour of the Taft Youth Development Center and a resident of the facility. Carl was also disruptive and disrespectful to Mr. Eric Vanzant while

on the tour. Taft YDC Gang Unit counselor witnessed and acknowledged gang related behavior while on the tour of the facility.

In a final order filed twelve days later, the juvenile court found proof beyond a reasonable doubt that Mr. Perkins was delinquent for violating DCS's aftercare program "in that he has been dismissed twice from Franklin County Alternative School." The juvenile court committed Mr. Perkins to DCS custody and recommended that he be placed in a secure facility. Mr. Perkins timely filed a notice of appeal to the trial court.

A bench trial was held on October 13, 2008. The parties stipulated to Mr. Perkins's violation of the DCS aftercare program as a result of disruptive activities and behavior at the alternative school eventually resulting in his dismissal from the school and his conduct during a tour of the Taft Youth Development Center ("Taft"). Accordingly, the only issue remaining for the trial court's resolution was the disposition for the violation. Mr. Perkins requested that he be placed in intensive probation with Community Intervention Services as an alternative to placement with DCS. The State asked that Mr. Perkins remain committed to DCS custody.

At the trial, the State recounted Mr. Perkins's prior delinquency history as follows:

March 1, '06, he was caught with an open blade knife at school.

February 14th, that year, he took a digital camera out of a purse of a student there.

March 3rd he went through nine lockers of students, and he was caught by the security people there.

* * *

January 30th, that year, he took cell phones from the pants of jeans belonging to a student there in the field house, and tried to sell it to another student.

January 10th that year, he took a cell phone from the field house, from the pants of another student, and it was recovered by one of the coaches.

February 16th took a cell phone from a bag of a student.

May 3rd of that year he was brought to court and found guilty of all those charges, with the exception of one of the thefts he was found not guilty of.

May 31st he appealed that. Judge Perry heard the appeal and he found Perkins delinquent and left him in custody of DCS committal.

September 22nd the case was reviewed by Judge Faris, he was kept in custody.

December 13th reviewed by Judge Faris, and he was allowed to be put on a trial home placement beginning January 31, 2007.

August 30, 2007, he assaulted a student at a ball game.

September 25th, he was found delinquent of that and committed to DCS. That commitment was suspended and he was put on probation at that time.

December 13, 2007, Truant Officer Danny Smith, with the high school, filed a petition that Perkins was absent 15 days from school. 10 days unexcused. I think five of those days he was late.

January 15th he was found guilty of truancy. January 15, '08, Judge Faris decided to keep him on the aftercare program.

February 25, 2008, and this is the basis for this action here is there was a petition by Eric Vanzant stating that the person was dismissed from the alternative school because he was disruptive to authorities and the staff. They took a tour of the Taft Youth Center, at which time Perkins was disruptive, disrespectful to Mr. Vanzant. While on the tour also, Mrs. White, who is here, who works at Taft, witnessed some gang related type behavior by Perkins while he was there.

March 12th, this year, Judge Faris once again heard the case, he committed him to DCS custody once again.

March 27th of this year, this appeal was filed

James Collins, an employee of the Southeast Tennessee Human Resource Agency, testified that his agency provides intensive probation services for juveniles in Franklin and Marion Counties. Mr. Collins indicated that his agency generally does not accept children who have already been in state custody "because they've already sort of surpassed us." He further noted that his agency is a grant program that cannot accept individuals such as Mr. Perkins who have already been placed in state custody.

Kim White testified that she is employed by DCS at Taft and that Mr. Perkins was assigned to her caseload. She explained that following Mr. Perkins's most recent commitment to DCS custody, he was brought to Taft for classification and then released to a group home in Bradley County, even though he qualified for placement at Taft at that time. According to Mrs. White, two serious incidents of theft while Mr. Perkins was at the group home resulted in him being "disrupted" from that placement. She stated that Mr. Perkins was then returned to Taft, since he still met the criteria for placement there -- his disruption during his earlier tour at the facility, which presented

him as a security threat; his prior offenses, including his previous charge for having a weapon on school grounds; and his violation of aftercare.

Mrs. White testified that Mr. Perkins had become involved in her Gang Resistance Attitude Perception and Education (GRAPE) program at Taft and was doing excellent. The program, according to the witness, addresses criminality, behavior, and the consequences of the choices one makes. She stated that Mr. Perkins had earned 100 percent of his points in the two weeks before the bench trial and “appear[ed] to be placed appropriately, because he is doing well.”

Mrs. White further explained that Mr. Perkins has had a lot of truancy issues in the past and that most of his problems relate to the educational area. She emphasized, however, that Mr. Perkins was perfectly on grade level. She opined, “[h]is best chance of success is not to come back to the community until he has received either a high school diploma or general education diploma, because most of his risks are on the educational area.” She noted that Mr. Perkins had been classified for a program level 2 at Taft, meaning he had to reach a point level of 560 for pre-release and 720 for release, which made it approximately a nine-month program, or another seven months after the trial date of October 13, 2008. During that time, he would either pursue a GED or secure a diploma.

Annette Henley, Mr. Perkins’s mother, testified that after her son was dismissed from school, he was then home schooled by a neighbor affiliated with Highland Rim Christian Academy. She stated that during that period, Mr. Perkins was working on his school work from 7:00 a.m. until 3:00 p.m., but admitted that the neighbor had not been present directly supervising him all that time. Mrs. Henley testified that Mr. Perkins was good and did not have anger issues with her.

On cross-examination, Mrs. Henley denied that her son’s past truancy problems were her fault. On further questioning by the trial court, she acknowledged that it was in Mr. Perkins’s best interest to complete his high school education, but she stated that she thought “it’d be better at home and try to get all that.” She also contended that her son “never stole” while he was home.

Mr. Perkins testified that the weapon charge against him involved a pocket knife that was open because it was broken and would not close. He claimed the knife was not his. He further denied stealing any cell phones. According to Mr. Perkins, someone else stole the phones and gave him one. He claimed that witnesses falsely implicated him. As to the incident during the tour at Taft, he testified that he did not make gang signs, but merely stood with his arms crossed. In regard to the theft at the group home, he asserted that someone else stole the laptop from the school.

Mr. Perkins claimed that if he got out of DCS custody, he would go to the in-school program at Highland Rim Christian Academy, which his mother was willing to fund. He testified that he had been attending church while at Taft and has been saved. If released from DCS custody, he asserted that he would start going to church, take care of his son, get a job, and continue his education.

At the conclusion of the hearing, the trial court found Mr. Perkins guilty of violating a condition of his aftercare program. The court ordered that Mr. Perkins remain committed to DCS

custody “based on his history and the fact he is making progress in the programs at Taft Youth Center.” This appeal ensued.

II. ISSUE

The issue presented for review is as follows:

Did the trial court appropriately order the defendant committed to DCS custody on his stipulated violation of home placement?

III. STANDARD OF REVIEW

The facts before us are not in dispute and we have before us only an issue of law. When the question on appeal is one of law, our scope of review is de novo with no presumption of correctness accompanying the trial court’s conclusions of law. *Union Carbide Corp. v. Huddleston*, 854 S.W.2d 87, 91 (Tenn. 1993).

IV. DISCUSSION

Mr. Perkins complains that the trial court should have returned him to home placement (i.e., aftercare) under Tenn. Code Ann. § 37-1-137(f) (Supp. 2008) instead of ordering that he remain committed to DCS custody.

A proceeding to terminate home placement shall be conducted in the same manner as a proceeding on a petition alleging delinquent or unruly conduct and in accordance with Tenn. Code Ann. § 37-1-137. Tenn. R. Juv. P. 35(a). The juvenile court committing a delinquent child to the custody of DCS retains jurisdiction to determine allegations of violation of home placement. Tenn. Code Ann. § 37-1-137(e). If the court finds that no violation occurred, then the child must be allowed to resume the former conditions of home placement. Tenn. Code Ann. § 37-1-137(f). However, if the court determines that a violation occurred that was “serious enough to justify termination,” the court shall order the child re-committed to the custody of DCS. *Id.* In this appeal, Mr. Perkins asserts that his stipulated violation was not “serious enough to justify termination” of his home placement under Tenn. Code Ann. § 37-1-137(f)(2).

The record reveals that Mr. Perkins was alleged to have violated his home placement due to his suspension from the alternative school and also because of his gang-related behavior during a tour of Taft. Addressing specifically the latter allegation, Mrs. White testified at trial that she and others witnessed Mr. Perkins flash gang signs to some of the Taft students during the tour. She explained that Mr. Perkins “almost set off some of my gang members . . . [H]e pushed some of my students to the point where I really though I was going to have an incident at Taft.” We find such

conduct, in addition to his suspension from the alternative school, to be sufficiently “serious” to merit Mr. Perkins’s continued commitment in DCS custody under Tenn. Code Ann. § 37-1-137(f). The record does not support Mr. Perkins’s contentions challenging the trial court’s ruling that affirmed the juvenile court’s order re-committing Mr. Perkins to DCS custody for the aftercare violation.

V. CONCLUSION

The decision of the trial court is affirmed. This case is remanded to the trial court for enforcement of that court’s judgment and for the collection of any costs assessed below, all pursuant to applicable law. Costs on appeal are taxed to Carl O’Neal Perkins.

JOHN W. McCLARTY, JUDGE